E 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 751

[EPA-HQ-OPPT-2021-0057; FRL-8332-04-OCSPP]

RIN 2070-AK86

Asbestos Part 1: Chrysotile Asbestos; Regulation of Certain Conditions of Use under Section 6(a) of the Toxic Substances Control Act (TSCA); Notice of Data Availability and Request for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule, notice of data availability.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of and soliciting public comment on additional data received by EPA related to the proposed rule for Part 1: Chrysotile Asbestos; Regulations of Certain Conditions of Use under TSCA. These additional data pertain to chrysotile asbestos diaphragms used in the chlor-alkali industry and chrysotile asbestos-containing sheet gaskets used in chemical production and may be used by EPA in the development of the final rule, including EPA's determination of what constitutes "as soon as practicable" with regard to the proposed chrysotile asbestos prohibition compliance dates for these uses.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPPT-2021-0057, using the Federal eRulemaking Portal at *https://www.regulations.gov*. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at

https://www.epa.gov/dockets.

FOR FURTHER INFORMATION CONTACT: *For technical information contact*: Peter Gimlin, Existing Chemicals Risk Management Division (7404M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 566-0515; email address: *gimlin.peter@epa.gov*. *For general information contact*: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554-1404; email address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In the Federal Register of April 12, 2022 (87 FR 21706 (FRL-8332-02-OCSPP)), EPA proposed a rule under TSCA section 6(a) to address the unreasonable risk presented by chrysotile asbestos under the conditions of use evaluated in the Risk Evaluation for Asbestos, Part 1: Chrysotile Asbestos. EPA proposed to prohibit manufacture (including import), processing, distribution in commerce and commercial use of chrysotile asbestos for chrysotile asbestos diaphragms for use in the chlor-alkali industry and chrysotile asbestos-containing sheet gaskets used in chemical production, effective two years after the effective date of the final rule, which is 60 days after publication of the final rule. EPA also proposed to prohibit the manufacture (including import), processing, distribution in commerce, and commercial use of chrysotile asbestos-containing brake blocks used in the oil industry, aftermarket automotive chrysotile asbestos-containing brakes/linings, other chrysotile asbestos-containing vehicle friction products, and other chrysotile asbestos-containing gaskets, effective 180 days after the effective date of the final rule. EPA also proposed to prohibit manufacture (including import), processing, and distribution in commerce of aftermarket automotive chrysotile asbestos-containing brakes/linings for consumer use, and other chrysotile asbestos-containing gaskets for consumer use, effective 180 days after the effective date of the final rule. Additionally, EPA proposed disposal and

related recordkeeping requirements. In accordance with TSCA section 6(c)(2)(A), EPA also discussed in the preamble to the proposed rule a primary alternative regulatory option to address the unreasonable risk presented by chrysotile asbestos under the conditions of use evaluated in the Risk Evaluation for Asbestos, Part 1: Chrysotile Asbestos. This primary alternative regulatory option included, among other requirements, a prohibition on the manufacture (including import), processing, distribution in commerce, and commercial use of chrysotile asbestos diaphragms in the chlor-alkali industry and chrysotile asbestos-containing sheet gaskets in chemical production effective 5 years after the effective date of the final rule and a requirement to comply with an Existing Chemicals Exposure Limit (ECEL) and related monitoring and recordkeeping requirements prior to the prohibition taking effect.

After being extended 30 days (87 FR 31814, May 25, 2022 (FRL-8332-03-OCSPP)), the comment period for the proposed rule closed on July 13, 2022. EPA received about 155 discrete comments as of the end of the extended public comment period. In the proposed rule, EPA requested public comment on several aspects of the proposed rule including the proposed prohibition compliance dates for the manufacture (including import), processing, distribution in commerce and commercial use of chrysotile asbestos.

Specific to chrysotile asbestos diaphragms used in the chlor-alkali industry, EPA sought public comment "to support or refute its assumption that [chlor-alkali] plants using asbestos diaphragms will convert to non-asbestos technologies, and the timeframes required for such conversions." 87 FR 21721. EPA sought comment on a prohibition compliance date that under TSCA sections 6(d)(1) would be both ''as soon as practicable'' and ''provide for a reasonable transition period,'' including information on the specific and detailed timelines to build asbestos-free facilities or to convert existing asbestos-using facilities to asbestos-free technology and the availability of asbestos-free technology. 87 FR 21726. EPA also requested information on "potential barriers to achieving the proposed prohibition date while considering the supply of chlor-alkali chemicals and on the potential impact of this transition on the market price of chlor-

alkali chemicals." *Id.*

EPA received significant comment on these issues during the public comment period for the proposed rule. EPA received comments supporting the proposed two-year prohibition timeline, such as from the Asbestos Disease Awareness Organization (ADAO). ADAO stated: "EPA's proposal correctly calls for the chlor-alkali industry to stop importing and using asbestos two years after the final rule becomes effective…. this phase-out deadline…can be accomplished without disrupting the U.S. supply of chlorine and caustic soda…[industry's] recent voluntary closure of substantial asbestos-diaphragm capacity demonstrates that the remaining plants can be shut down quickly and without hardship to industry or consumers." (EPA-HQ-OPPT-2021-0057-0397). However, many commenters argued the two-year timeline would not provide the chlor-alkali industry a reasonable transition period and requested EPA provide additional time to allow the chlor-alkali industry to transition away from asbestos-containing diaphragms, to allow for this transition to occur without causing economic disruptions, and public health impacts resulting from potential disruption of drinking water disinfection supplies due to fluctuations in the production of chlorine. Some commenters also expressed concerns about the proposed alternative five-year timeline for similar reasons. Commenters provided EPA with information on the conversion process to non-asbestos technologies and the timing involved, including examples from plants in the United States and elsewhere in the world. Commenters noted that Canada provided 11 years for the conversion of one plant, and in the European Union, Germany allowed 14 years for the conversion of one plant. Comments indicated that a single plant could be converted within 45 to 55 months, including project design and engineering, permitting, construction and startup (EPA-HQ-OPPT-2021-0057-0405c). However, commenters expressed concerns, including: "recent supply chain disruptions cast doubt on whether that aggressive five-year timeline can be met for a single…facility conversion; it would be clearly infeasible for multiple plant conversions…. Globally, there are only four electrolyzer manufacturers. Based on raw metal supply disruptions, electrolyzer market demand and production capacity,

manufacturers have indicated they may only support a large-scale conversion every 3-4 years…. The logistical and cost-intensive process of converting several facilities simultaneously compound the infeasibility of EPA's proposed timeframe." (EPA-HQ-OPPT-2021-0057-0405) That commenter (and others) noted the time required to obtain an air permit: "…preparing, applying for, and obtaining an [state] air permit, which is generally required to commence construction, …can easily take eighteen months or even the entire twenty-four-month period." The commenter also noted "…sequential conversion to membrane is needed to maintain an ongoing supply of the chlor-alkali chemicals. Even if it were possible to construct the plants concurrently, shutting down that amount of capacity at the same time would have dramatic impact on supply across many industries and public services…" (EPA-HQ-OPPT-2021-0057-0405). Many commenters raised concerns about the impact the 2-year prohibition on the nation's supply of chlorine and caustic soda, which are essential chemicals for many industries. Many commenters asserted that a sudden shortage of chlorine could severely impact the ability of municipal water treatment facilities to disinfect public drinking water and therefore present a public health concern.

After the close of the public comment period for the proposed rule, EPA received comments and held meetings with stakeholders, including affected industry and interested groups, related to the use of chrysotile asbestos diaphragms in the chlor-alkali industry and chrysotile asbestos-containing sheet gaskets used in chemical production. Topics of these comments and meetings included media reports regarding asbestos workplace practices in the chlor-alkali industry, the timing of any prohibition on the manufacture (including import), processing, distribution in commerce and commercial use of chrysotile asbestos diaphragms and chrysotile asbestos-containing sheet gaskets, and the requirement, included in the primary regulatory alternative described in the preamble to the proposed rule, for processors and users of chrysotile asbestos diaphragms and chrysotile asbestos-containing sheet gaskets to comply with an ECEL as an interim control measure prior to the effective date of a prohibition. Meetings

were held with: ADAO (July 6 & October 13, 2022); Chlorine Institute (July 6, 2022); Dow Chemicals (October 28, 2022); Axial/Westlake (November 3, 2022); Olin Corp. (November 14, 2022); OxyChem (November 16, December 7, 2022 & February 9, 2023), and Chemours (January 18, 2023). EPA received data as part of and following those stakeholder meetings and is now making those public data and stakeholder meeting summaries available to the public in the rulemaking docket (EPA-HQ-OPPT-2021-0057). Some industry information made available to EPA has been claimed as confidential information under TSCA section 14 and is not available in the public docket. The additional information provided in the docket includes a supplemental letter from ADAO that provided additional information and recommendations to EPA on chlor-alkali diaphragm use (EPA-HQ-OPPT-2021-0057-0412). The ADAO letter notes a report on workplace practices, which provides documentation on the exposure of workers at chlor-alkali facilities to chrysotile asbestos. The letter also provides information to show that the chlor-alkali industry "has shut down a substantial portion of its asbestos diaphragm production capacity in the last three years and is in the process of transitioning to non-asbestos membrane technology," and information on industry conversion to membrane technology, specifically the conversion of the OxyChem facility in LaPorte/Battleground, Texas (EPA-HQ-OPPT-2021-0057-0412). Finally, in the letter, ADAO recommends EPA seek answers from industry to seven specific questions regarding chlor-alkali production statistics; reduction of asbestos-diaphragm capacity, supply of chlor-alkali chemicals to water treatment facilities; specific conversion plans for asbestos-diaphragm facilities; financial and economic analyses, import volumes, and amounts of stockpiled asbestos (EPA-HQ-OPPT-2021-0057-0412).

In addition, other information made available to EPA after the close of the public comment period has been posted to the docket, including several public comments submitted to EPA regarding the potential impacts of the proposed rule's compliance date for the prohibition on the commercial use of chrysotile asbestos diaphragms in the chlor-alkali industry on the supply of chlorine used for drinking water disinfection.

EPA received comments pertaining to the timing of the prohibition on the manufacture (including import), processing, distribution in commerce and commercial use of chrysotile asbestos diaphragms requesting the consideration of the current transition schedules for chlor-alkali facilities from chrysotile asbestos diaphragms to non-asbestos alternative technology. For example, comments suggest it may be practicable to prohibit the manufacture (including import) of chrysotile asbestos before prohibiting processing, distribution in commerce and commercial use of chrysotile asbestos, as all chlor-alkali companies that currently use chrysotile asbestos already have or will have a sufficient supply of chrysotile asbestos for foreseeable future operations prior to the prohibition compliance dates. Regarding the timing of the prohibition on processing, distribution in commerce and commercial use, some commenters believe it may be practicable for the compliance dates to vary for different affected persons, as comments have informed EPA that individual chlor-alkali companies may have different considerations for the timing of any transition away from chrysotile asbestos diaphragm technology, based on whether they intend to close or convert facilities, the number and size of facilities they have, and inherent technical differences in specific plant conversions. Comments received described the different approaches to move away from chrysotile asbestos use given the different designs of chrysotile asbestos diaphragm technology, the type of intended conversion to a non-asbestos diaphragm technology or membrane technology, the limited availability of suppliers and technical expertise during the conversion process, as well as differences regarding permits needed for the conversion of facilities and permitting timelines based on their location. Comments indicate that an approach that can accommodate differences among facilities may provide a reasonable transition period for each remaining chlor-alkali facility still using chrysotile asbestos diaphragms, while ensuring the associated unreasonable risk is addressed as soon as practicable. Another commenter, however, believes that since industry is already transitioning to non-asbestos chlor-alkali technology an expeditious ban of the use of chrysotile asbestos in chlor-alkali production will not only protect public health but achieve important economic and environmental benefits.

Comments EPA received regarding the timing of the prohibition on the manufacture (including import), processing, distribution in commerce and commercial use of chrysotile asbestos-containing sheet gaskets in chemical production, state that the prohibition compliance date should be delayed for titanium dioxide production facilities to allow a transition from chrysotile asbestos containing sheet gaskets to non-asbestos sheet gaskets, as titanium dioxide producers have different technical considerations from other chemical producers for the transition away from the chrysotile asbestos-containing sheet gaskets.

Comments from stakeholders also included discussion of workplace monitoring strategies to comply with an asbestos ECEL during the interim period prior to a prohibition on the commercial use of chrysotile asbestos diaphragms. For example, AIHA stated that "the proposed exposure limits of 0.005 f/cc and 0.0025 f/cc cannot be measured for an 8-hour work shift by existing sampling and analytical protocols for asbestos…due to the volume of air that would need to be collected to achieve the detection limit necessary…" (EPA-HQ-OPPT-2021-0057-0288). OxyChem has suggested that calculation of compliance with an ECEL could take into account the assigned protection factor (APF) used for individual tasks when such respirator use is required by a facility's exposure control plan.

II. Request for Public Comments

EPA requests public comment on any data in the docket that was received during and after the proposed rule public comment period, and how EPA should consider it during the development of the final rule. In particular, EPA is seeking comments on how to consider the additional information received regarding maintaining the prohibition compliance dates, staggering the prohibition compliance dates or establishing longer deadlines for the prohibition on processing, distribution in commerce and commercial use of chrysotile asbestos for chrysotile asbestos diaphragms for use in the chlor-alkali industry and chrysotile asbestos-containing sheet gaskets used in chemical production. EPA is also seeking comments on the new information provided regarding the practicability of measuring 0.005 f/cc and 0.0025 f/cc for an 8-hour work

shift by existing sampling and analytical protocols and how EPA could put in place effective interim exposure reduction requirements in a way that they are compatible with OSHA requirements and industrial hygiene practices, where those requirements and practices will address unreasonable risk until prohibitions are fully implemented. EPA also seeks comments on the workplace safety concerns in the chlor-alkali industry raised by ADAO in its comments.

List of Subjects in 40 CFR Part 751

Environmental protection, Chemicals, Export certification, Hazardous substances, Import Certification, Recordkeeping.

Dated: March 10, 2023.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2023-05325 Filed: 3/16/2023 8:45 am; Publication Date: 3/17/2023]